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## THIAGARAJAN S RENGASAMY & ORS v. SRI GANES PALANIAPAN

HIGH COURT MALAYA, KUALA LUMPUR
SU TIANG JOO JC
[CASE NO: WA-23CY-50-10-2018]
15 NOVEMBER 2023

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**Abstract** – *(i) A document classified as a Part A document is admitted as to its authenticity and contents, resulting in the truth of its contents being conceded. Therefore, an action for defamation grounded on such contents, where the alleged defamatory statements had been classified as a Part A document, is like a writ on water; (ii) For an action grounded on defamation to be properly determined, the whole statement and the exact words alleged to be offensive and defamatory must be pleaded; (iii) A successful party is always entitled to costs except where it is shown that the successful party had misconducted himself or was negligent or guilty of a material omission.*

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***TORT:*** *Defamation – Statements – Claim – Allegations that tortfeasors made defamatory statements in social media posts and during town hall meeting and media conference – Whether statements and exact words alleged to be offensive and defamatory pleaded – Whether alleged defamatory statements made reference to claimants*

E

***CIVIL PROCEDURE:*** *Documents – Classifying documents in preparation for trial – Tort of defamation – Allegations that tortfeasors made defamatory statements in social media posts – Defamatory statements classified as Part A document – Whether defamatory statements properly classified – Whether admitted as to authenticity and contents, resulting in truth of contents being conceded – Effects of classifying defamatory statements as Part A document – Rules of Court 2012, O. 34 r. 2(2)(d) & (e)*

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***CIVIL PROCEDURE:*** *Costs – Action dismissed – Tort of defamation – Tortfeasor lied on oath – Costs tortfeasor ought to be entitled to*

H

The first plaintiff was a Board member of the Human Resources Development Fund (HRDF) and the Chief Executive Officer (CEO) of the second to fourth plaintiffs, which were companies. The defendant on the other hand was a Facebook user of two accounts under the names of 'Sri Ganes' and 'Dato' Sri Ganes'. This was an action initiated by the plaintiffs against the defendant grounded on the tort of defamation, based on the defendant's statements made in: (i) four Facebook publications dated 31 May 2017, 6 June 2018, 7 June 2018 and 9 June 2018 ('FB posts'); (ii) a town hall meeting called by the then Minister of Human Resources ('town hall

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meeting'); and (iii) a media conference held in front of the office building of the Malaysian Anti-Corruption Commission ('MACC media conference'). All the alleged defamatory statements contained in the FB posts had been classified as a Part A document while the alleged defamatory statements made during the town hall meeting and the MACC media conference were classified as Part B documents. Another issue raised by the plaintiffs was whether the defendant ought to be impeached as his testimony on oath contradicted the evidence in the form of an exchange of WhatsApp messages tendered by the first plaintiff. The defendant asserted that the alleged defamatory statements made by the defendant at the town hall meeting and the MACC media conference were not pleaded *ad verbatim* in the plaintiffs' statement of claim ('SOC').

**Held (dismissing claim):**

**(1)** When classifying documents in preparation for trial, it is crucial for a litigant to take into account the provisions of O. 34 r. 2(2)(d) and (e) of the Rules of Court 2012. What is the legal effect when a document is classified as a Part A document? The law remains settled that a document classified as a Part A document is admitted as to its authenticity and contents, resulting in the truth of its contents being conceded and thus, an action for defamation grounded on such contents is like a writ on water. The plaintiffs were very much aware that the alleged defamatory statements were classified as Part A documents from an early stage of the action right up to closing submissions but made no attempts to have the documents re-classified as Part B documents so that their contents could be challenged. Therefore, the FB posts alleged to contain offending defamatory statements, having been classified as Part A documents, were deemed to be true as to their contents and by law, an action for defamation premised on what is true stands dismissed. (paras 20, 21, 23, 28 & 30)

**(2)** It is of paramount importance that for an action grounded on defamation to be properly determined, the whole statement and the exact words alleged to be offensive and defamatory must be pleaded. From a perusal of the offending statements as pleaded in the plaintiffs' SOC, the alleged defamatory statements made in the FB posts dated 31 May 2017 and 9 June 2019 and during the town hall meeting and the MACC media conference were not pleaded *ad verbatim*. Hence, without pleading the exact words and all the statements alleged to be defamatory in full, this court could not properly determine whether the statements were indeed defamatory. On this ground alone, the action premised on the alleged defamatory statements made in the FB posts dated 31 May 2017 and 9 June 2019 and during the town hall meeting and the MACC media conference stood dismissed. (paras 34 & 35)

**(3)** For the plaintiffs' claim to succeed, the plaintiffs must prove that the alleged statements made by the defendant were defamatory with reference to the plaintiffs. The test on whether a defamatory statement refers to a plaintiff is an objective one. The statement must be given a meaning that when it is published, a reasonable man to whom the publication was made would be likely to understand it in a libelous sense against the plaintiffs. Although the FB posts dated 6 and 7 June 2018 were pleaded *ad verbatim*, the statements did not make any reference to any of the plaintiffs. Further, no witnesses were called by the plaintiffs to testify that readers of the impugned statements as well as any persons having heard the statements made during the town hall meeting and the MACC media conference, would understand the words in the offending statements to refer to any of the plaintiffs. (paras 36, 37 & 44)

**(4)** The defendant claimed that he had never communicated nor had prior dealings with the first plaintiff. However, evidence from the WhatsApp messages between the defendant and the first plaintiff showed otherwise. The first plaintiff showed the WhatsApp text messages exchanged between him and the defendant. This was prior to the alleged defamatory statements being published. After the exchange of WhatsApp text messages, the first plaintiff and the defendant did meet up. Therefore, the defendant had lied on oath. The defendant was given an opportunity to purge his contempt and this he did when he took the witness stand and under oath, apologised unreservedly for having lied that he had never communicated with the first plaintiff and had never met him before. This court accepted his unreserved apology and excused him. (paras 57-59)

**(5)** The plaintiffs' case was dismissed. Under normal circumstances, the defendant ought to be entitled to substantial costs. However, as the defendant had expressly lied on oath, a nominal sum of costs of RM5,000 subject to allocatur fees was awarded to the defendant, to be paid by the plaintiffs. (paras 61-63)

**Case(s) referred to:**

*Abdul Azeez Abdul Rahim v. Lim Guan Eng [2023] 9 CLJ 513 CA* ***(refd)***

*Ayob Saud v. TS Sambanthamurthi [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321 HC* ***(refd)***

*Chew Hock Jin v. Lim Jenn Shiah [2021] CLJU 114; [2021] 1 LNS 114 CA* ***(refd)***

*Chew Sew Khian v. Saniboey Mohd Ismail [2002] CLJU 333; [2002] 1 LNS 333 HC* ***(refd)***

*Keluarga Communication Sdn Bhd v. Normala Samsudin & Another Appeal [2006] 2 CLJ 46 CA* ***(refd)***

*Khairul Azwan Harun v. Mohd Rafizi Ramli [2016] 9 CLJ 858 HC* ***(refd)***

*Khalid Abd Samad v. Dato' Seri Tajuddin Abdul Rahman & Another Appeal [2023] CLJU 2131; [2023] 1 LNS 2131 CA* ***(refd)***

*Melawangi Sdn Bhd v. Tiow Weng Theong [2020] 4 CLJ 1 FC* ***(refd)***
*Mohamed Apandi Ali v. Lim Kit Siang [2022] 7 CLJ 786 HC* ***(refd)***
*Shim Vui Geh v. Dayang Masturah Sahari & Another Appeal [2023] 10 CLJ 733 CA* ***(refd)***
*Tiow Weng Theong v. Melawangi Sdn Bhd [2019] 2 CLJ 655 CA* ***(refd)***

**Legislation referred to:**
Rules of Court 2012, O. 34 r. 2(2)(d), O. 52A rr. (1), (2)

**Other source(s) referred to:**
*Gatley On Libel And Slander,* 11th edn, para 7.3, p 214

*For the plaintiffs - Buvaneswary Krishnamoorthy, Ramesh Sivakumar Ramaveloo & Calvin Lim Sin Guan; M/s Goik, Ramesh & Loo*
*For the defendant - Harvindar Singh Saran Singh; M/s Harvindar Singh & Co*

*Reported by Lina E*

## JUDGMENT

**Su Tiang Joo JC:**

A document classified as a Part A document is admitted as to its authenticity and contents resulting in the truth of its contents being conceded, and thus an action for defamation grounded on such contents is like a writ on water.

### Introduction

**[1]** This is an action initiated by the plaintiffs against the defendant grounded on defamation.

**[2]** The first plaintiff was at the relevant time a Board member of the Human Resources Development Fund ("HRDF") which is managed by the Human Resources Development Corporation which in turn is an agency under the purview of the Ministry of Human Resources Malaysia. The HRDF is governed by the Pembangunan Sumber Manusia Berhad Act 2001.

**[3]** The first plaintiff is also the Chief Executive Officer (CEO) of the second, third and fourth plaintiffs. The second, third and fourth plaintiffs are private limited companies incorporated in Malaysia.

**[4]** The defendant on the other hand is a Facebook user who has absolute use and control over his two accounts under the names of "Sri Ganes" and "Dato' Sri Ganes".

### Background Facts

**[5]** Four Facebook publications ("FB posts") which were published on different times were relied upon by the plaintiffs to ground their defamation action and are set out below.

**[6]** The first FB post was made on 31 May 2017, whereby the defendant through his Facebook account named "Sri Ganes" posted the following alleged defamatory statement in the form as pleaded in para. 9 of the statement of claim ("SOC") filed by the plaintiffs and is set out hereunder:

> 100s of millions of public funds mishandled so easily;
>
> ... The exchange of gifts are just not about handbags or watches, it has also involved ridiculously expensive tangible assets for closing big unfair deals';
>
> ... every evidence I gather is strongly pointing to the obvious mishandlings in many ways;
>
> ... it looks like I was denied my rights for fair business because some unethical deals of the parties entrusted to perform their fiduciary duties and
>
> SO CALL SECTORIAL COMMITEES AND THE BOARD MEMBER (ULTIMATE PROXY AND GATE KEEPER) mechanisms to swindle millions monies which was supposed to be used to build powerful workforce which would be the strong pillar of economy!?

**[7]** The second FB post was made on the defendant's Facebook account "Sri Ganes" on 6 June 2018, where the defendant shared an alleged defamatory post made by another Facebook user by the name of "David Marshel". The post as pleaded in para. 12 of the SOC is reproduced as follows:

> Power abuse!! Corrupt!!
>
> Salah satu Ahli lembaga HRDF korup menelan ratusan juta ringgit dengan mengunakan persatuan yang ditubuhkan hanya untuk menelan duit rakyat.! Dengan kuasa lembaga pengarah kontrak ratusan juta dari HRDF ditelan. Tidak takut #SPRM? Katanya asalkan bagi menteri BN menang kaki korup ini boleh bermaharajela! Siapakan dalang ini?
>
> #Pintar
>
> #Talent #nexus
>
> Siapa Ahli Lembaga HDRF ini?

**[8]** The third FB post was made on 7 June 2018 by the defendant who uploaded a video on his Facebook account, "Dato' Sri Ganes" which the plaintiffs pleaded in para. 14 of their SOC as containing the following alleged defamatory statement:

> Despite a legal notice which was denied in a public forum and months of battle I managed to raise my concerns. The Minister YB Kula Segaran believes in transparency! We have the right man for the job! HRDF – Human Resources Development Fund.

**[9]** For the fourth and final FB post made on 9 June 2018, the defendant using his Facebook account "Sri Ganes" made another alleged defamatory statement which is pleaded in para. 17 of the SOC as follows:

> ... Meanwhile, the head of K-Pintar Sdn Bhd, RA Thiagaraja resigned from the HRDF board on Friday morning – before he could be removed as promised by the minister. There were complaints that his appointment was a conflict of interest because he was also a training provider ...

**[10]** All the four FB posts above will hereinafter be referred to collectively as "the Facebook posts".

**[11]** Besides the Facebook posts, the plaintiffs have also grounded their action for defamation on the defendant having on two other instances made defamatory statements against the plaintiffs. The first instance was said to have been made during a town hall meeting on 7 June 2018, called by the then Minister of Human Resources ("the town hall meeting"). This instance is pleaded in para. 20 of the SOC. The second instance was that of a media conference held on 12 June 2018 in front of the office building of the Malaysian Anti-Corruption Commission or MACC in short, and hereinafter referred to as "the MACC Media Conference". The alleged defamatory statements made during the town hall meeting and at the MACC Media Conference are pleaded in paras. 20 to 22 of the SOC as follows:

> 20. Tambahan lagi, pada 07.06.2018 pihak HRDF telah menganjurkan satu mesyuarat Dewan Bandar ('Town Hall Meeting') yang dihadiri oleh Menteri Sumber Manusia, YB Tuan M Kulasegaran dan Ketua Setiausaha Sumber Manusia, Datuk Dr Mohd Gazali Abas, di mana Defendan telah membuat kenyataan-kenyataan Fitnah terhadap Plaintif Pertama, Plaintif Kedua. Plaintif Ketiga dan Plaintif Keempat dikhalayak orang ramai dan/atau pihak-pihak yang mempunyai hubungan dengan HRDF. Defendan telah membuat kenyataan yang ditujukan kepada Plaintif Pertama bahawa pelantikan Plaintif Pertama sebagai ahli Lembaga HRDF merupakan satu konflik kepentingan ('Conflict of interest') kerana Plaintif Pertama juga merupakan CEO kepada Plaintif Kedua, Plaintif Ketiga dan Plaintif Keempat yang merupakan syarikat-syarikat yang membekalkan kursus dan/atau seminar latihan dan/atau merupakan penyedia Latihan ('Training Provider').
>
> 21. Lebih-lebih lagi, Defendan juga mengisytiharkan dengan kenyataan yang dibuat oleh beliau di mesyuarat tersebut bahawa Plaintif Pertama telah menyalurkan kontrak-kontrak dari HRDF kepada syarikat-syarikatnya sendiri (Plaintif Kedua, Ketiga dan Keempat) dan Menteri Sumber Manusia harus melucutkan dan/atau mengeluarkan Plaintif Pertama sebagai Ahli Lembaga HRDF. Ini merupakan satu fitnah yang tidak berasas kerana ia telah dibuat atas satu andaian sahaja tanpa sebarang bukti yang bernas.

22. Selain daripada itu, pada 12.06.2018, Defendan telah mengadakan satu persidangan media di hadapan bangunan pejabat Suruhanjaya Pencegah Rasuah (Malaysian Anti-Corruption Commission) (MACC) di mana Defendan telah membuat kenyataan-kenyataan Fitnah dengan memberitahu pihak media bahawa salah seorang Ahli Lembaga HRDF yang telah meletakkan jawatan baru-baru ini sebagai Ahli Lembaga HRDF mempunyai kaitan dengan penyelewengan wang sebanyak RM300,000,000.00 (Ringgit Malaysia Tiga Ratus Juta) duit dana HRDF. Kenyataan tersebut dengan terus terang berkaitan dengan Plaintif Pertama kerana pada masa itu, Plaintif Pertama merupakan Ahli Lembaga HRDF yang baru sahaja meletak jawatan.

**[12]** Aggrieved by the Facebook posts, the statements made during the town hall meeting and at the MACC Media Conference all said to have been made by the defendant as stated above, the plaintiffs commenced this action against the defendant for defamation.

**[13]** The defendant admitted that such statements were made. However, he denies that the statements were defamatory or referred to the plaintiffs.

**[14]** During the course of trial, the plaintiffs called only one witness namely, Thiagarajan a/l S Rengasamy, who is the first plaintiff himself (PW1). The defendant, Sri Ganes a/l Palaniapan (DW1), was the sole witness for the defence. PW1 gave evidence-in-chief by way of two witness statements marked as PWS1(A) and (B) and DW1 gave evidence-in-chief *via* one witness statement marked as DWS1. Both of the witnesses were subjected to cross-examination.

## Law On Defamation

**[15]** *Halsbury's Law of England* (4th edn) gives the definition as to what amounts to a defamatory statement as follows:

> A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to his office, profession, calling, trade or business.

**[16]** In *Ayob Saud v. TS Sambanthamurthi* [1989] 1 CLJ 152; 1 CLJ (Rep) 321; [1989] MLJ 315) (HC) His Lordship, Mohamed Dzaiddin J (later CJ) set out succinctly the elements of the tort of defamation as follows:

> In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the plaintiff to show (1) the words are defamatory; (2) the words refer to the plaintiff; and (3) the words were published.

**[17]** In *Keluarga Communication Sdn Bhd v. Normala Samsudin & Another Appeal* [2006] 2 CLJ 46 (CA) His Lordship Zulkefli Makinudin JCA (later PCA), held:

> At the outset we would state that the test to be applied when considering whether a statement is defamatory of an Appellant is well settled in that it is an objective one in which it must be given a meaning a reasonable man would understand it and for that purpose, that is, in considering whether the words complained of contained any defamatory imputation, it is necessary to consider the whole article. *Gatley on Libel & Slander*, 10th edn on this point at pp. 108 and 110 *inter alia* states as follows:
>
> It is necessary to take into consideration, not only the actual words used, but the context of the words. It follows from the fact that the context and circumstances of the publication must be taken into account, that the Appellant cannot pick and choose parts of the publication which, standing alone, would be defamatory. This or that sentence may be considered defamatory, but there may be other passages which take away the sting.

**[18]** It is, thus, settled law that to succeed in an action for defamation, the plaintiffs have to prove the following three elements, namely that:

(i) the offending statements are defamatory;

(ii) the offending statements refer to the plaintiffs; and

(iii) that the offending statements have been published.

*Whether The Alleged Offending Statements Are Defamatory*

**[19]** This court takes note that all the offending defamatory statements contained in the Facebook posts have been classified as Part A documents (see Bundle B1 pp. 1 to 13).

**[20]** When classifying documents in preparation for trial, it is crucial for a litigant to take into account the provisions of O. 34 r. 2(2)(d) and (e) of the Rules of Court 2012 which is reproduced below:

> 2. Pre-trial case management when directed by the Court (O. 34 r. 2)
>
> (d) the contents of the bundle of the documents referred to in subparagraph (c) **shall be agreed on between all parties as far as possible and this bundle of agreed documents shall be filed by the plaintiff and marked as A;**
>
> (e) if the parties are unable to agree on certain documents, those documents on which agreement cannot be reached shall be included in separate bundles and each such bundle shall be filed by the plaintiff and marked as follows:

(i) **Part B – documents where the authenticity is not disputed but the contents are disputed;**

(ii) **Part C – documents where the authenticity and contents are disputed; …** (emphasis added)

**[21]** The question then arises, what is the legal effect when a document is classified as a Part A document? This was decided in *Tiow Weng Theong v. Melawangi Sdn Bhd* [2019] 2 CLJ 655 ("*Tiow Weng Theong*") where the Court of Appeal speaking through Nallini Pathmanathan JCA (now FCJ) at paras. [38], [39], and [76] said:

[38] What then is the construction to be placed on a Part A document? It follows logically that if Part B deals with a situation where the content of the document is in dispute and Part C deals with a situation where both the authenticity and content are in dispute, then that can only leave *Part A as comprising documents where both the authenticity and the content of the document are Not in dispute.* Any other construction would render the categorisation accorded to Parts B and C nugatory.

[39] What is the meaning to be afforded to the phrase the content of the document is agreed or not in dispute? *It means that the words comprising the content of a document are not disputed. It means that the words comprising the content of the document are agreed.*

[76] For the reasons cited above, we conclude that the learned judge erred in holding that the documents in Part A required proof of the truth of the contents of the documents. As we have concluded that no such proof is necessary, it follows that the defence of justification is made out. *In other words the categorization of the email in Part A effectively means that the contents are not in dispute or are agreed. As the contents are agreed to by the plaintiff he effectively accepts what is stated in the email. Agreeing and accepting the contents of the emails means that the plaintiff accepts the truth of the same. This in turn can only lead to the legal consequence that justification is made out.* (emphasis added)

**[22]** The decision of the Court of Appeal in *Tiow Weng Theong* was later overturned by the Federal Court, see *Melawangi Sdn Bhd v. Tiow Weng Theong* [2020] 4 CLJ 1. However, it is vital to note that it was overturned on the ground that the Court of Appeal had factually erred in holding that the litigating party had agreed for the offending statement in an email to be placed in Part A when the litigating party had repeatedly sought for it to be moved to Part B. To facilitate reading, I set out hereunder the following passages of the judgment of the Federal Court delivered by His Lordship, Azahar Mohamed CJ (Malaya):

[22] Principally, the decision of the Court of Appeal was premised on the issue of the legal effect or consequence of including the e-mail in Part A of the agreed bundle of documents. The Court of Appeal held that the High Court erred in law and fact when holding that document in Part A (in the instant case the e-mail dated 13 October 2008) required proof of

the truth of the contents of the document. The Court of Appeal held that the emplacement of the e-mail in Part A resulted in the defence of justification being made out. In the words of the Court of Appeal:

> [76] For the reasons cited above, we conclude that the learned judge erred in holding that the documents in Part A required proof of the truth of the contents of the documents. As we have concluded that no such proof is necessary, it follows that the defence of justification is made out. In other words, the categorisation of the email in Part A effectively means that the contents are not in dispute or are agreed. As the contents are agreed to by the plaintiff he effectively accepts what is stated in the email. Agreeing and accepting the contents of the email means that the plaintiff accepts the truth of the same. This in turn can only lead to the legal consequence that justification is made out.

...

...

[25] It is material to point out at this juncture that the Court of Appeal anchored its judgment on the primary ground that the plaintiff had agreed to place the e-mail in Part A of the agreed bundle of documents. As we shall see later, this has a far-reaching implication. As a consequence, it was marked in the course of evidence without reservation and admitted into evidence. This is made clear by the following excerpt of the judgment of the Court Appeal:

> [24] This is the primary ground of the appeal. It relates to the adjectival in law in relation to the classification of documents into separate categories, now usually described in practice as Parts A, B and C. Of particular concern here is the meaning to be ascribed to, and the legal consequences of placing documents in Part A.
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> [25] In this context, it is not in dispute that the litigating parties agreed to place the email in Part A of the Agreed Bundle of Documents. As a consequence, it was marked in the course of evidence without reservation and admitted into evidence.
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> [26] As it was so marked learned counsel for the defendant maintained that it amounted in effect to the plaintiff admitting or conceding that:
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> (i) The email existed and was not therefore fabricated;
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> (ii) The email had been authored by the maker stated in the email; and
>
> (iii) The plaintiff admitted that the contents of the documents were true.

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> [27] It is the last of the three propositions that gave rise to serious dispute in this and other appeals. By admitting that the contents of the documents were true, there would effectively be a concession that the very statements that the plaintiff had challenged as being defamatory were in fact true. This in turn would have the legal consequence that the defence of justification had been proven or conceded to by the plaintiff. The plaintiff would therefore have no further basis for its claim in defamation.

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Crucially, at another place of its judgment, the Court of Appeal observed:

> [28] It is important to point out that the option was given to the plaintiff (through its counsel) to retract or remove the relevant document from the category known as Part A and for it to be placed in Part B during the course of the trial. However, the plaintiff refused this offer and insisted on the email remaining in Part A.

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[26] *Evidently, the judgment of the Court of Appeal implied that the plaintiff agreed to place the e-mail in Part A and that it was the plaintiff who insisted the e-mail to remain in Part A. This part of the judgment of the Court of Appeal is not free from difficulty; it raises serious problems. Was the Court of Appeal correct in concluding that the litigating parties agreed to place the email in Part A of the agreed bundle of documents?*

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[27] *In the circumstances, one of the key questions for us to determine is whether the plaintiff had agreed to place the e-mail in Part A of the agreed bundle of documents.*

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[28] The answer to this factual question must be approached on the basis of what was precisely agreed to by the litigating parties. All this came out during the proceedings before the learned JC and meticulously recorded in the notes of proceedings that formed part of the appeal records ("AR"). *At the hearing before us, in responding to the questions posed by us, learned counsel for the plaintiff took us through the relevant parts of the notes of proceedings to support his contention that the plaintiff never agreed to place the e-mail in Part A and that in truth the plaintiff wanted to remove the e-mail from Part A and to move it to Part B of the agreed bundle of documents.* On the basis of the factual matrix in the present case, in our opinion, this line of argument has merit.

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[29] We therefore need to turn our attention to the notes of proceedings and look more closely and carefully scrutinise what actually transpired during the course of the High Court proceedings. To this end, we have read the AR in its entirety. In this regard, the relevant pages which have a strong bearing on the matter can be seen at pp. 170 to 178 of Jilid 2(2) Bahagian B of the AR. These relate to notes of proceedings at the start of the trial before the plaintiff called its witness. The relevant parts are set out below:

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> *DNR (counsel for the plaintiff): ... we are now proposing the document in Part A to be moved to Part B. They are objecting. So I humbly request My Lord's ruling on that as to whether we may be permitted to move it to Part*

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*B because it has not start. The trial hasn't started. The witnesses are here. The maker of the document is also here. So if we are allowed to do that, My Lord, then I will humbly request for that to move to Part B.*

YA: Precisely what document?

DNR: My Lord, the document at page 78 to 79 in Ikatan Dokumen Bersama Bundle B. Page 78, My Lord.

YA: An email, right? DNR: Yes, My Lord.

[30] *It must be noted that the e-mail referred to by the learned JC is the same e-mail that is the subject matter of the present appeal.* Subsequently, after hearing submissions from both sides, at p. 177 the High Court made the following order:

YA: Pages 78 and 79 of Part A is maintained. But parties are allowed to cross-examine.

[31] *In whichever way one were to look at it, it is not accurate to say that the litigating parties agreed to place the email in Part A of the agreed bundle of documents. More significant still, and most problematically, in our opinion, the observation of the Court of Appeal that the plaintiff "insisted on the e-mail remaining in Part A" is a mistaken reading of the true stand taken by the plaintiff through his counsel. The key point here is that, as we have seen earlier, the plaintiff all along wanted to remove the e-mail from the category known as Part A and for it to be placed in Part B. This is irrefutable.*

[32] *The more closely we looked at the notes of proceedings the more apparent it became that a principal error of the Court of Appeal was its finding that the plaintiff agreed to place the e-mail in Part A. There was failure on the part of the Court of Appeal to appreciate and consider that the plaintiff disputed the placing of the email in Part A. This failure led the Court of Appeal into error. The Court of Appeal should have directed its mind to the true stand taken by the plaintiff at trial in relation to the placing of the e-mail in Part A. The Court of Appeal failed to accord the stand of the plaintiff the importance it deserved. The judgment of the Court of Appeal was therefore based upon a wrong premise of facts. That being the case, the underlying basis for the Court of Appeal to justify its appellate intervention was, with respect, wholly untenable. This is in itself sufficient to warrant appellate intervention on our part and dispose of the present appeal.* (emphasis added)

**[23]** Therefore, the law remains settled that a document classified as a Part A document is admitted as to its authenticity and contents resulting in the truth of its contents being conceded, and thus an action for defamation grounded on such contents is like a writ on water.

**[24]** Unlike the facts in *Tiow Weng Theong*, in the present case if one reads through the notes of proceeding in its entirety, *it can be observed that there were no attempts nor requests by learned counsel for the plaintiffs to have the alleged offending defamatory statements in the Facebook posts which have been classified as Part A documents moved from Part A to Part B.* Instead, learned counsel for

A the plaintiffs had (only) sought for the Part C documents to be re-classified as Part B documents, (see notes of proceeding (encl. 52) at p. 402 lines 26 and 36, and p. 403 lines 17 to 19) without any attempt made to have the offending Facebook posts in Part A re-classified as Part B documents.

B **[25]** In fact, when PW1 was first called as a witness on 2 May 2023, time was taken to have the documents referred to by PW1 marked as exhibits. Despite that, at the risk of repetition, no attempt was made by learned counsel for the plaintiffs to have all the alleged defamatory statements classified as Part A documents reclassified as Part B documents.

C **[26]** Another opportunity presented itself for the reclassification of the impugned Facebook posts when learned counsel for the defendant opened the defendant's case by reading aloud his opening statement (f) filed on 14 April 2023 wherein at para. 15 thereof, he specifically said that as the four offending (Facebook postings) statements are placed in Part A of the common bundle of documents ("CBOD"), the contents cannot be taken as being
D defamatory. The defendant's learned counsel had even referred to the Court of Appeal case of *Tiow Weng Theong*. Despite this red flag having been hoisted, learned counsel for the plaintiffs did not attempt to have these impugned documents re-classified.

E **[27]** Yet another opportunity presented itself when this was also raised in the closing written submissions of learned counsel for the defendant (encl. 49) but alas, again no attempt was made to have the offending statements in the Part A category moved to Part B like what was done in *Tiow Weng Theong*.

F **[28]** Therefore, the plaintiffs are very much aware that the alleged defamatory statements are classified as Part A documents from an early stage of the action right up to closing submissions but made no attempts to have the documents re-classified as Part B documents so that their contents can be challenged.

G **[29]** Thus, under the doctrine of *stare decisis*, this court is bound by the principle of law distilled and laid down by both the Court of Appeal and the Federal Court in *Tiow Weng Theong* as elaborated above, that is, Part A documents are agreed as to their existence, authenticity and contents.

H **[30]** Wherefore, premised upon the factual matrix of this case, on this ground alone, the Facebook posts alleged to contain offending defamatory statements having been classified as Part A documents are deemed to be true as to their contents, and by law, an action for defamation premised on what is true stands dismissed.

I

*Statements Made At The Town Hall Meeting And The MACC Media Conference*

**[31]** With regards to the alleged offending defamatory statements made during the town hall meeting, a copy of the statement transcribed from a video taken during the event, can be found in the bundle of documents marked as B6 and classified as a Part B document. The alleged defamatory statement is reproduced as follows:

> ... are you aware that one of your Board Members is a training provider as well and describe himself as a representative of many training providers which I am not ... The position apparently conflict of interest allows the Board Member to channel contracts to his own companies, you know. It is not an unknown thing. Everyone knows about it. You know. ... How can a board Member get a contract, you know? Board member can form companies and get contract.

**[32]** As for the incident at the MACC Media Conference on 12 June 2018, a copy of the statement transcribed from the video taken during the event can be found in the bundle of documents marked as B5 and classified as a Part B document. The alleged defamatory statement is reproduced as follows:

> Adakah CEO HRDF ini tidak melihat bahawa pelantikan ahli Lembaga pengarah tersebut sudah semestinya membuka peluang untuk penyelewengan ... Kami telah menerika sedikit maklumat bahawa ahli pengarah tersebut dan CEO telah pun mengumumkan surat jawatan la ... Saya ada beberapa saksi yang lain akan menyerahkan dokumen penting untuk merupakan bukti penyelewengan melibatkan lebih dari 300 dana kehilangan, RM300 juta dana HRDF lah. ... yang kebanyakannya dana yang hilang, ada Lembaga pengarah yang terlibat dan sebagainya.

**[33]** The defendant asserted that the alleged defamatory statements made by the defendant at the town hall meeting and the MACC Media Conference were, however, not pleaded *ad verbatim* in the plaintiffs' SOC. This pleading point will be discussed in detail below.

**Pleading Point**

**[34]** The law has been settled that it is of paramount importance that for an action grounded on defamation to be properly determined, the whole statement and the exact words alleged to be offensive and defamatory must be pleaded, see *Keluarga Communication Sdn Bhd* (*supra*). His Lordship Gunalan Muniandy JCA sitting in the Court of Appeal in the case of *Chew Hock Jin v. Lim Jenn Shiah* [2021] CLJU 114; [2021] 1 LNS 114 which is a defamation action, expressed this principle as follows:

> [49] Moving on to the FB Posts, the crucial fact to be noted is that the whole FB Posts and the exact words said to be offensive were not pleaded. On this point, we have duly noted the observations and findings of the LHCJ in Appeal No. 210 with which we associate ourselves. The LHCJ had, in our view, correctly paid careful attention to the words

actually uttered and those that were pleaded. In essence, the LHCJ rightly took into account the fact that the words pleaded were only part of the statements published in the Mandarin Language on 2.09.2015 and 1.12.2015 which the Plaintiffs chose not to plead in toto. Hence, the Court, in confining itself to the words pleaded, was not in a position to determine the context in which they were uttered.

[50] Likewise, the LHCJ was not satisfied with accuracy of the translation which was not pleaded in its entirety and also expressed doubts as to whether the translation in fact gave an accurate picture of what was published in Mandarin in the FB Posts.

[51] His Lordship was entirely correct in expressing the position under the law of defamation to be that in order to properly determine whether the words are defamatory or otherwise and whether they refer to the Plaintiff, the exact words and the whole article must be pleaded.

[52] In the instant case, the whole translation of the impugned FB Article was not pleaded as admitted by PW.1, the interpreter tasked with translating the article from Mandarin to B. Malaysia. PW1 said that she merely 'picked and chose' parts of the article as instructed by the lawyer for the Plaintiff whereas some important parts in favour of the Appellant were not translated. Hence, the translation was in doubt and could not on the evidence before him sustain the Plaintiff Mr. Chew's claim.

[53] In support of the principle that in a defamation suit the actual words used and the context of the words are of paramount importance, the Respondent Mr. Lim cited the Court of Appeal case of *Keluarga Communication v. Normala Samsudin* [2006] 2 CLJ 46; [2006] 2 MLJ 700 which held that:

> [15] At the outset, we would state that the test to be applied when considering whether a statement is defamatory of a plaintiff is well settled in that it is an objective one in which it must be given a meaning a reasonable man would understand it and for that purpose, that is, in considering whether the words complained of contained any defamatory imputation, it is necessary to consider the whole article. *Gatley on Libel & Slander* (10th Ed) on this point at pp 108 and 110, *inter alia*, states as follows:
>
> > It is necessary to take into consideration, not only the actual words used, but the context of the words.
> >
> > It follows from the fact that the context and circumstances of the publication must be taken into account, that the plaintiff cannot pick and choose part of the publication which, standing alone, would be defamatory. This or that sentence may be considered defamatory, but there may be other passages which take away the sting.

**[35]** In the present case, from a perusal of the offending statements as pleaded in the SOC in the bundle of pleading (A) ("BOP") and the documents themselves in the common bundle of documents (marked as B1), this court found that the alleged defamatory Facebook posts dated 31 May 2017 (SOC para. 9) and 9 June 2018 (SOC para. 17), and the alleged defamatory statements made during the town hall meeting on 7 June 2018 and the MACC Media Conference held on 12 June 2018 were not pleaded *ad verbatim.* Hence, without pleading the exact words and all the statements alleged to be defamatory in full, this court cannot properly determine whether the statements are indeed defamatory. On this ground, the action premised on the alleged Facebook posts of 31 May 2017 and 9 June 2018, and the alleged defamatory statements made during the town hall meeting on 7 June 2018 and the MACC Media Conference held on 12 June 2018 stands dismissed as well.

**[36]** Although the Facebook posts dated 6 June 2018 dan 7 June 2018 were pleaded *ad verbatim*, this court finds that the statements do not make any reference to any of the plaintiffs. On the need for there to be a reference to the plaintiffs, this element will be dealt with in greater detail below.

*Reference To The Plaintiffs*

**[37]** As mentioned above, for the plaintiffs' claim to succeed, the plaintiffs must prove that the alleged statements made by the defendant are defamatory with reference to the plaintiffs.

**[38]** In *Khairul Azwan Harun v. Mohd Rafizi Ramli* [2016] 9 CLJ 858; [2017] 9 MLJ 205 (HC), His Lordship S Nantha Balan J (now JCA) stated:

> [95] The issue here is whether the plaintiff was defamed by the press release on the MARA property purchase scandal that was issued by the defendant on 6 July 2015. *The first task at hand is for this court to determine whether the impugned words are capable of bearing a defamatory meaning and if so, whether they are in fact defamatory of the plaintiff* (as per para 9 of the statement of claim). As may be gleaned from the various case authorities referred to above, the guiding principles to the determination of the meaning to be ascribed to the impugned words are, *inter alia*, an interpretation that is reasonable and not strained or perverse or utterly unreasonable. The impugned article has to be read as a whole and anything contained within the article which dilutes of neutralises any defamatory suggestion is to be taken into account as well. Last but not least, an over elaborate analysis is to be avoidede. (emphasis added)

**[39]** Therefore, the important question is whether the statements made by the defendant at the town hall meeting and the MACC Media Conference bear any defamatory imputations with reference to the plaintiffs.

**[40]** Azimah Omar JCA in *Abdul Azeez Abdul Rahim v. Lim Guan Eng* [2023] 9 CLJ 513; [2023] MLJU 1949 (CA) applied the chase levels of imputation to classify defamatory statements. Her Ladyship stated:

> [33] In brief, it is not uncommon in defamation actions that the Defendant would strive to impress upon the Court that the defamatory statements are capable of a 'lesser' and more "innocuous" *Lucas-box* meaning than that of the higher and more serious meaning that the Plaintiff might suppose. And if the Defendant were successful to do so, then he needs only prove the Defence of justification to the threshold of justifying the publication of the lesser *Lucas-Box* meaning of the defamatory statements.
>
> [34] This *Lucas-Box* principle was further expanded and given more clarity by the England and Wales Court of Appeal in the case of *Chase v. News Group Newspapers Ltd* [2002] EWCA Civ 1772 by classifying defamatory statements into 3 "Chase Levels" of imputation:
>
> > [37] Under modern libel practice a defendant must set out in his/her statement of case the defamatory meaning he/she seeks to prove to be essentially or substantially true. This is now known as the *Lucas-Box* meaning, following the leading case of *Lucas Box v. News Group Ltd* [1986] AIIER 177; [1986] 1 WLR 147. By this means the claimant (and the court) will know unequivocally what the defendant is seeking to justify.
> >
> > [45] *The sting of a libel may be capable of meaning* that a claimant has in fact committed some serious act, such as murder. *Alternatively,* it may be suggested that the words mean that *there are reasonable grounds to suspect that he/she has committed such an act. A third possibility* is that they may mean that *there are grounds for investigating* whether he/she has been responsible for such an act. (emphasis added)
>
> [35] Closer to home, the machination of this classification was recently digested by the High Court in the case of *Mohamed Apandi bin Ali v. Lim Kit Siang [2022*] 11 MLJ 655. For ease of reference, the relevant excerpts of that decision are reproduced below:
>
> > [36] The *colourable and variable nature of the 'sting of libel' has been addressed in the landmark commonwealth decision of Chase v. Newsgroup Newspapers Ltd* [2002] EWCA Civ 1772 ('*Chase*') in which the court there has propounded the Chase Levels principle. The court in Chase essentially propounded that a defamatory statement may carry with it three defamatory imputations of varying degrees. *Level 1 being the extreme imputation that the plaintiff has indeed committed a serious act Level 2 being the milder imputation that there are justifiable grounds to suspect that the plaintiff has committed the same act and lastly Level 3 being the lesser imputation that there are grounds that the plaintiff ought to be investigated for the probable commission of the same act.*

> [37] The identification of the proper Chase Level is pertinent as different Chase Levels will later (in the second tier of the exercise) determine the degree or threshold of justification required for the defendant to succeed in a defence of justification. The entire principle and machination of the Chase Level principle has been astutely digested by S Nantha Balan J (now JCA) in the case of *Khairul Azwan bin Harun v. Mohd Rafizi bin Ramli* [2017] 9 MLJ 205:
>
> ...
>
> [96] Following the case of Chase, it is now settled that:
>
> (a) words may be capable of meaning the claimant has in fact committed some serious act ('Chase level 1 meaning');
>
> (b) alternatively, the words may mean that there are reasonable grounds to suspect that the claimant has committed such an act ('Chase level 2 meaning'); and
>
> (c) a third possibility is that the words may mean that there are grounds for investigating whether the claimant is responsible for such act ('Chase level 3 meaning'); (emphasis added)

**[41]** Azimah Omar (now JCA) when Her Ladyship sat in the High Court in *Mohamed Apandi Ali v. Lim Kit Siang* [2022] 7 CLJ 786; [2022] 11 MLJ 655 also expressed the following:

> [47] *Similar to the present case, the plaintiff was specifically named and beckoned to avail himself to explain his disposition and his alleged cover-up of the 1MDB scandal* (just as Khairy Jamaluddin was specifically called out for an explanation of his alleged proximity and involvement in a scandal involving UMNO). Thus, it is equally possible to ascribe the lesser meaning that there are reasonable grounds for investigations to be conducted and for the plaintiff to come forth and give his explanation on the matter.
>
> [48] Of course this court is minded that it is extremely unsavoury to a person's constitution and reputation to merely be linked to the grotesque 1MDB scandal, but *not all commentary to that effect automatically conveys the extreme meaning that the person so linked is guilty of an offence or guilty of the act so alleged. Neither would such commentary automatically be an actionable defamation. Especially in cases where the statement calls for and gives room for an explanation, then the statement is not at all an unshakeable or unwavering statement of fact, and equally can be a call for inquiry or investigation.*
>
> [49] Thus, with the 'act' itself appropriately identified and the appropriate Chase Level imputation determined, this court is of the preliminary finding that the impugned statement is at most capable of the lesser defamatory meaning of:
>
> There are reasonable grounds for the plaintiff to be investigated for his actions or inactions during his term as Attorney General, which may have provided a cover-up for the 1MDB scandal, and the suspected persons involved in the same scandal.

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> [50] Is the lesser meaning ascribed above defamatory still? This court answers in the positive that it is defamatory. Indeed, the statement still carries with it a libellous sting, *albeit* a lesser one (although definitely not the commission or guilt of a criminal offence the plaintiff insists it to be). (emphasis added)

B **[42]** Thus, based on the law derived from the authorities and the evidence adduced by the plaintiffs, this court finds that the alleged defamatory statements made at the town hall meeting and the MACC Media Conference, are capable of the lesser defamatory meaning *ie*, a chase level 3 meaning for investigations to be carried out on that person alleged to be a board member of HRDF and a training provider who is channelling contracts to his own companies with there being misappropriation of funds of RM300 million. However, unlike the facts that obtain in *Mohamed Apandi Ali* (*supra*), none of the plaintiffs in this case were either named in the town hall meeting or at the MACC Media Conference. It was the first plaintiff himself who took it upon himself to inform the audience present at the MACC Media Conference that he was the person that was being referred to. In the light of the above facts and authorities, the plaintiffs have failed to prove the second mandatory element of defamation, which is, that the statements made during the town hall meeting and MACC Media Conference referred to any of them.

E **[43]** Although the Facebook posts dated 6 June 2018 dan 7 June 2018 were pleaded *ad verbatim*, this court finds that the statements having been classified as Part A documents, are therefore not defamatory and in any event, they do not make any reference to any of the plaintiffs.

**[44]** The test on whether a defamatory statement refers to a plaintiff is an objective one. The statement must be given a meaning that when it is published, a reasonable man to whom the publication was made would be likely to understand it in a libelous sense against the plaintiffs. This is stated in *Ayob Saud* (*supra*), and the ordinary and natural meaning may include by implication or inference that will lead a reasonable reader with general knowledge to understand the words in a defamatory sense.

G **[45]** His Lordship Syed Ahmad Helmy B Syed Ahmad J in *Chew Sew Khian v. Saniboey Mohd Ismail & Ors* [2002] CLJU 333; [2002] 1 LNS 333 (HC) at p. 6, stated two ways to prove the objective test, namely:

> The issue on whether or not the impugned article refers to the Plaintiff is a question of law.
>
> It is trite law that an essential ingredient to found an action for defamation is that the words or matter complained of refer to the plaintiff. Unless it is alleged and proved that the subject matter of the action was published of and concerning the Plaintiff the action is bound to fail – *Carter-Ruck on Libel and Slander* – page 54. In determining the issue of identity, the test is an objective one. As was stated by Lord Guest in *Morgan v. Odhams Press Ltd* [1971] 1 WLR 1239 at page 1261:

> In my view, a somewhat more exacting test should be predicated where the question is one of identity. It is not sufficient for the reader to say "I wonder if the article refers to Johnny Morgan" nor is pure speculation sufficient. Nor is it sufficient that a reasonable person believes that the words refer to the Plaintiff. The test is an objective one. The ordinary reader must be fair minded and not avid for scandal. He must not be unduly suspicious. The ordinary reader must have rational grounds for his belief that the words refer to the plaintiff.

There are two ways of proving identity, namely:

> *a) by the calling of witnesses to testify that readers of the impugned article would understood the words appearing therein to refer to the Plaintiff; or*
>
> *b) an ordinary reader reading the article would reasonably understood the words to refer to him.* (emphasis added)

**[46]** In this present case, no witnesses were called by the plaintiffs to testify that readers of the impugned statements as well as any persons having heard the statements made during the town hall meeting and the MACC Media Conference would understand the words in the offending statements to refer to any of the plaintiffs. Thus, this court is tasked to take on the role of the ordinary reader reading the article to ascertain whether the article would reasonably understand the Facebook posts, the impugned statements made at the town hall meeting, and at the MACC Media Conference to refer to any of the plaintiffs.

**[47]** The evidence adduced from the sole witness of the plaintiffs, PW1, who is the first plaintiff, was that, at the time the allegations were made against him, he was occupying a fiduciary position in the HRDF Corporation and that the alleged defamatory statements had injured his credit and reputation, causing his business operations to be affected and this had caused the business of his other companies namely the second, third and fourth plaintiffs to slow down (see plaintiffs' submissions at encl. 53 paras. 26 and 29.)

**[48]** After having gone through the evidence led with care, this court is unable to find any impugned statement that made reference to the plaintiffs by name. Instead, it was PW1, who took it upon himself during the MACC Media Conference on 12 June 2018 to say the impugned statement which was pleaded in an edited form in para. 22 of the SOC was in reference to him. I agree with the submission made by the defendant that the impugned statements did not expressly name or refer to any of the plaintiffs, and in particular, the first plaintiff.

**[49]** Proof that a defamatory statement has made reference to a claimant must be clear from the statement itself or from anyone acquainted with the claimant who could identify him from the words used. It is not for the claimant to assert that it refers to him without any independent evidence. This is a matter of logic and common sense. If it were otherwise, anyone can claim that a defamatory statement refers to him even if there is no reference to the claimant at all. See *Gatley On Libel And Slander* (11th edn. para. 7.3 p. 214 where the learned joint editors said:

> Statement capable of referring to the claimant.
>
> The issue of identification is to be decided on the same principles as those which govern the question of whether the words are capable of a defamatory meaning (inferred from the speeches in *Morgan v. Odhams Press* [1971] 1 WLR 1239 at pp 1243, 1264, 1269 to 1270). Where the claimant is expressly identified by name, it is not necessary to produce evidence that anyone whom the statement was published did identify the claimant. The question is not whether anyone did identify the claimant but whether the person who were acquainted with the claimant could identify him from the words used (cf *Freer v. Zeb* [2008] EWHC 212 QBD at [47]).

**[50]** On the face of the statements in the Facebook posts, although #pintar, and #talent were used, but if both the words are taken on their own, they are not sufficient to specifically refer to any party. In my considered view, "pintar" is a Malay adjective for smart, clever or resourceful, whereas the word "talent" is a noun for natural aptitude or skill. None of these words by themselves can be said to point directly or refer to the second and third plaintiffs respectively.

**[51]** Learned counsel for the plaintiffs during the trial tried to link the fourth plaintiff through its involvement with a project called "nexus", However, from the evidence led, I find that the plaintiffs have failed to prove such a link on a balance of probabilities. In other words, from the offending statements as pleaded, in my considered view, any reasonable reader will not be able to understand that the words referred to the fourth plaintiff at all.

**[52]** Therefore, by the reasonings set out above, I find that the plaintiffs have failed to prove their case on a balance of probabilities.

**[53]** Although the plaintiffs satisfied the last element for the law of defamation, *ie*, that of publication because the respective statements were published through social media *via* Facebook as well as having been uttered during the town hall meeting and the MACC Media Conference respectively, however, satisfying this element alone is insufficient for the plaintiffs' claim to succeed.

**[54]** For the reasons stated above, this claim is devoid of merit. Accordingly, the plaintiffs' claim is dismissed.

**[55]** To cover every aspect, this court notes that there was another issue raised in the plaintiffs' submissions, that is, whether DW1 who is the defendant himself ought to be impeached as his testimony on oath contradicts the evidence in the form of an exchange of WhatsApp messages tendered by PW1.

**[56]** The testimony of DW1 as per the notes of proceeding is set out hereunder:

**502**

| | | |
|---|---|---|
| 1 | **SG** | Not true, Yang Arif. |
| 2 | | |
| 3 | **BVK** | I put it to you that you have personally dealt with Mr Thiagarajan. |
| 4 | | |
| 5 | **SG** | Not true, Yang Arif. |
| 6 | | |
| 7 | **BVK** | I again wish to put you on notice that you are on oath, Mr Sri Ganes. |
| 8 | | Are you certain that you have never communicated with Mr Thiagarajan |
| 9 | | prior to 31/05/2018? |
| 10 | | |
| 11 | **SG** | No, Yang Arif. |
| 12 | | |
| 35 | **BVK** | Mr Ganes, before we continue, I wish to remind you that you are on |
| 36 | | Oath, yes? Ok, I have repetitiously asked you today whether you have |



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**505**

| | | |
|---|---|---|
| 1 | | communicated with the first Plaintiff prior to 31/05/2018 and you have |
| 2 | | said no. Is that correct? |
| 3 | | |
| 4 | **SG** | True. |
| 5 | | |

A

| | | |
|---|---|---|
| 25 | BVK | It is not true, ok. Irrespective of whether you say it is not true, I put it to |
| 26 | | you that you did indeed have this WhatsApp conversation with the first |
| 27 | | Plaintiff and that you have committed perjury by lying on this stand. |
| 28 | | |
| 29 | SG | Not true, Yang Arif. |
| 30 | | |
| 31 | BVK | I also put it to you that as stated in the WhatsApp conversations, you |
| 32 | | actually met with the first Plaintiff on 02/02/2018 at around 03:15PM at |
| 33 | | The Dome. |
| 34 | | |
| 35 | SG | I am not aware, not true, Yang Arif. |
| 36 | | |

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**[57]** Here, DW1 claimed that he had never communicated nor had prior dealings with the first plaintiff, Thiagarajan (PW1). However, evidence from the WhatsApp messages between DW1 and PW1 at encl. 46 which was later admitted and marked as P1 showed otherwise. P1 shows the WhatsApp text messages exchanged between PW1 and DW1 on their plan to meet up. This was prior to the alleged defamatory statements being published.

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**[58]** This court accepted PW1's evidence that after the exchange of WhatsApp messages, he and DW1 did meet up at the Dôme Restaurant at Bangsar Shopping Centre in Kuala Lumpur prior to the alleged defamation. Wherefore, this court at the end of trial found that DW1, Sri Ganes a/l Palaniapan had lied on oath. This finding does not assist the plaintiffs' defamation suit in any way. This decision was made to show this court's displeasure with parties who come to court to pervert the due administration of justice despite having taken the oath to tell the truth, the whole truth, and nothing but the truth.

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**[59]** By lying, the act of the defendant perverts the due administration of justice and amounts to contempt in the face of the court. Pursuant to the provisions of O. 52A rr. (1) and (2) Rules of Court 2012, DW1 was given an opportunity to purge his contempt. This he did on 27 September 2023 when he took the witness stand and under oath, apologised unreservedly for having lied that he had never communicated with PW1 and had never met him before. This court accepted his unreserved apology and excused him

G

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**[60]** Be that as it may, the party affected may wish to take the matter further premised upon the guidance given by the Court of Appeal in *Shim Vui Geh v. Dayang Masturah Sahari & Another Appeal* [2023] 10 CLJ 733; [2023] MLJU 2262 at paras. [117] and [118] where His Lordship Lee Swee Seng JCA said:

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> [117] Generally, statements made in judicial proceedings cannot be a matter of a separate tort of injurious falsehood or defamation. In deserving cases where much of Court's time has been dissipated listening to allegations that could not be substantiated or supported by facts, the Court shall not hesitate to mulct a party with costs.
>
> [118] *In a case that justifies prosecution for perjury the Court would direct the parties affected to make a police report or furnish a copy of the notes of proceedings to the Attorney General as the Public Prosecutor.* (emphasis added)

B

**[61]** In the upshot, the plaintiffs' claim is dismissed.

**[62]** Under normal circumstances, the defendant ought to be entitled to substantial costs, see *Khalid Abd Samad v. Dato Seri Tajuddin Abdul Rahman & Another Appeal* [2023] CLJU 2131; [2023] 1 LNS 2131 where His Lordship S Nantha Balan JCA after reviewing the jurisprudence on costs cited with approval a passage from the *Malaysia Civil Procedure* (2021) (Vol 1) (at 855) that a successful party is always entitled to costs except where it is shown that the successful party had misconducted himself or was negligent or guilty of material omission.

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**[63]** As this court has found that the defendant has expressly lied on oath, a nominal sum of costs of RM5,000 subject to allocator fees is awarded to the defendant to be paid by the plaintiffs to the defendant.

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